

RESPONSE TO ELECTION OF SPECIES REQUIREMENT AND PRELIMINARY
AMENDMENT

U.S. Appln. No.: 10/583,041

Atty. Docket No.: Q79261

REMARKS

In response to the Election of Species Requirement, dated September 22, 2009, which is based on an alleged lack of unity of invention, applicant elects Species D for examination, on which claims 1, 5 to 8 and new claims 9 to 11 are readable.

Applicant has added new claims 9 to 11 which depend from claim 5 and which otherwise correspond to claims 2 to 4.

Applicant traverses the election of species requirement.

Applicant first notes that the International Search Report and Written Opinion of the corresponding International Application PCT/JP2004/019464, a copy of which is enclosed, reports that the subject matter of claims 1 to 8 of the International Application is neither disclosed in any of the documents cited in the ISR nor obvious to a person skilled in the art. Therefore, the inventions of claims 1 to 8 of the present application mutually have a technical relationship involving one or more of the same or corresponding special technical features.

The MPEP at §1850, in discussing unity of invention before the International Searching Authority, states that if the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. The MPEP states that no problem arises in the case of a genus/species situation where the genus claim avoids the prior art, provided the genus claim is directed only to alternatives of a similar nature and the species falls entirely within the genus. Since no problem

was encountered in the Written Opinion of the International Application, there should be no problem with respect to lack of unity of invention during the present national stage.

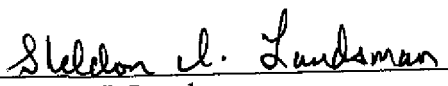
Further, the Examiner in the present application has not followed the USPTO rules for making a lack of unity of invention requirement. In particular, the MPEP at §1893.03(d), in discussing unity of invention during the national stage states as follows:

When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group.

In the present case, the Examiner has not explained why each group lacks unity with each other group (i.e., why there is no single general inventive concept), and has not specifically described the unique special technical feature in each group that would show a lack of unity of invention.

In view of the above, applicant requests withdrawal of the requirement.

Respectfully submitted,


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